

**MINUTES OF THE
UTAH TAX REVIEW COMMISSION**

Thursday, October 21, 2010 – 9:00 a.m. – Room 450 State Capitol

Members Present:

Mr. M. Keith Prescott, Chair
Mr. David Crapo, Vice Chair
Sen. J. Stuart Adams
Mr. Mark K. Buchi
Rep. Tim M. Cosgrove
Sen. Brent Goodfellow
Comm. Bruce Johnson
Mr. Bruce Jones
Mr. Dixie Leavitt
Mr. Lawrence C. Walters

Ms. Janis A. Dubno
Sen. Lyle W. Hillyard
Ms. Kathleen Howell
Rep. Todd E. Kiser

Staff Present:

Mr. Phillip V. Dean, Policy Analyst
Mr. Leif G. Elder, Policy Analyst
Mr. Bryant R. Howe, Assistant Director
Mr. Robert H. Rees, Associate General Counsel
Ms. Rebecca L. Rockwell, Associate General Counsel
Ms. Amanda K. Majers, Legislative Secretary

Members Absent:

Mr. Lawrence R. Barusch
Rep. John Dougall

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. TRC Business

Chair Prescott called the meeting to order at 9:06 a.m. and excused Sen. Hillyard, Mr. Barusch, Ms. Dubno, and Ms. Howell. He also welcomed Rep. Cosgrove as a new member of the TRC.

MOTION: Mr. Crapo moved to approve the minutes of the June 15, 2010 meeting. The motion passed unanimously, with Rep. Cosgrove absent for the vote.

2. Income Tax Working Group

Mr. Prescott explained that a working group consisting of himself, Sen. Wayne Niederhauser, Frank Hales, Utah State Tax Commission, Comm. Bruce Johnson, Rick Johnson, attorney, Stoel Rives, Curtis Trader, certified public accountant, Trader Roberts and Associates, Lynn Solarczyk, Utah State Tax Commission, and Roger Tew, attorney, met several times during the past few months to draft legislation addressing the determination of taxpayer domicile under the individual income tax and other related provisions.

Ms. Rockwell distributed and discussed 2011 General Session draft legislation, "Tax Revisions" (2011FL-0390/004).

Mr. Buchi asked what remedy a taxpayer has if two states both claim a taxpayer as a resident and how a taxpayer would avoid being taxed twice on the same income. Mr. Prescott noted that Utah and other states provide a credit for individual income taxes paid to another state.

Comm. Johnson said that if an individual has Utah source income, such as income from a Utah rental property or from a Utah business, then that individual would clearly be subject to the Utah income tax. In this instance it is not a question of residency, but of the source of income. Comm. Johnson said that determining the source of passive investment income can be a problem for some taxpayers. He said that

under the Multi State Tax Compact, a taxpayer may request mediation when two states are claiming the same income. He said that taxpayers do have remedies available to them.

Comm. Johnson said that with respect to earned income, the state where the income is earned has a clear claim.

Mr. Buchi asked if this draft legislation overturns any Utah State Tax Commission precedent. Comm. Johnson said that it does for some individuals. He noted that one example is a provision that a temporary absence from the state ends if the individual or individual's spouse remains in this state for more than 30 days in a calendar year.

Mr. Buchi asked if the legislation could lead to an unfair result for some taxpayers. He said that while he understands the need for a "bright line" test, such a test could result in an unfair outcome for some taxpayers.

Mr. Walters asked how a taxpayer will know about the changes included in the draft legislation. Ms. Rockwell said that the Utah State Tax Commission plans to issue a publication addressing these issues.

Mr. Roger Tew discussed options or addressing domicile that were considered by the working group.

Comm. Johnson said that facts and circumstances are carefully considered when determining a taxpayer's domicile. For example, the nature and extent of living accommodations in another state would be one factor in determining domicile.

Ms. Rockwell said that the working group will hold one or more additional meetings to consider other issues including certain issues regarding a pass-through entity.

Mr. Shaun Olsen, Tax Committee, Utah Association of Certified Public Accountants, stated that certain issues may need to be more fully considered by the working group and said he would provide written comments to the TRC.

3. Single Statewide Sales and Use Tax Rate Working Group

Mr. Crapo introduced the issue. He said that a working group consisting of himself, Mr. Leavitt, and Rep. Kiser was formed at the last TRC meeting to study the proposal by Rep. Harper to establish a statewide uniform sales and use tax rate. He said that the working group has met and forwards a draft report for consideration by the TRC.

Mr. Howe distributed the draft working group report which is in the form of a letter to Rep. Kiser concerning his request that the TRC respond to several issues concerning a uniform statewide sales and use tax rate. He also distributed a map titled, "Streamlined State Status 10-01-09."

Comm. Johnson suggested that page six of the draft report be amended to clarify that Utah is not a full member. Comm. Johnson said that Utah is an associate member state of the Streamlined Sales and Use Tax Agreement.

Mr. Crapo noted that there are several ways to implement a uniform statewide sales and use tax rate but that the working group decided that consideration of these issues was outside the scope of what it was asked to review.

The TRC discussed the draft report. Mr. Crapo suggested that the draft report be sent to the Utah Association of Counties, the Utah League of Cities and Towns, and the Utah Transit Authority for comment and review. He also suggested that members of the TRC review the draft report and contact staff with suggested changes. He recommended that the report be considered at the next TRC meeting.

4. Other Items / Adjourn

MOTION: Mr. Buchi moved to adjourn the meeting. The motion passed unanimously, with Rep. Cosgrove absent for the vote.

Chair Prescott adjourned the meeting at 10:55 a.m.